

**STATE OF NEVADA BOARD TO REVIEW CLAIMS
BOARD MEETING MINUTES
JUNE 14, 2012**

I. CALL TO ORDER

Chairman John Haycock called the meeting to order at 10:00 a.m. from the Las Vegas location. The meeting was conducted via videoconference with locations in Las Vegas, at the Grant Sawyer Building, 555 E. Washington Ave., Room 4412E and in Carson City at the Nevada Legislative Building, 401 S. Carson St., Room 2134.

A. BOARD MEMBERS PRESENT

Chairman John Haycock, Representative of independent petroleum dealers
Vice-Chairman George Ross, Representative of petroleum refiners
Colleen Cripps, Ph.D., Nevada Division of Environmental Protection
Maureen Tappan, Representative of the general public
Wayne Seidel, Department of Motor Vehicles
Peter Mulvihill, State Fire Marshal's Office

BOARD MEMBERS ABSENT

Michael Cox, Representative of the independent retailers of petroleum

OTHERS PRESENT

Valerie King, Victoria Joncas, Hayden Bridwell, Steve Fischenich, Greg Lovato,
Kevin Sullivan, Marlene Huderski, Chad Schoop, and Todd Croft,
NDEP
Rose Marie Reynolds, State Attorney General's Office – Las Vegas
Joe, McGinley, McGinley & Associates, Inc.
Scott Keesey, Broadbent & Associates, Inc.
Kurt Fehling, McGinley & Associates, Inc.
George Hagan, McGinley & Associates, Inc.
Jon Bell, Broadbent & Associates, Inc.
Keith Stewart, Stewart Environmental, Inc.
Marc Westfall, 7-Eleven Inc.
Matt Grandjean, Stantec

II. PUBLIC FORUM

There were no requests to speak.

III. APPROVAL OF THE AGENDA

Mr. Seidel moved to approve the agenda. Ms. Cripps seconded the motion. There was no discussion. Motion carried unanimously.

IV. APPROVAL OF THE MARCH 8, 2012 MINUTES

Ms. King informed the Board that there were some revisions to page 9 of the minutes, however, they were just for clarification purposes and the content had not changed.

Ms. Tappan moved to approve the minutes. Mr. Seidel seconded the motion. There was no discussion. Motion carried.

Chairman Haycock abstained from voting because he was not present at the March 8, 2012 meeting.

V. STATUS OF THE FUND

Ms. King reported on the status of the State of Nevada Petroleum Fund (Fund) for fiscal year 2012, which runs from July 1, 2011 to June 30, 2012. She stated approximately \$7.5 million was forwarded from fiscal year 2011. Approximately \$450,000 in fees had been collected for storage tank enrollment into the Fund. Approximately \$9.36 million was collected from the ¾ cent per gallon fee and just over \$19,000 in interest was earned for a total revenue of \$17,335,278.

Ms. King reported on the total expenditures for the Board's salary was \$976.40, the total for in-state travel was \$243.09 and operating was \$972.79. The transfer to NDEP for staff operations was approximately \$751,000.00. Just over \$2,500.00 was transferred to the State Environmental Commission. Approximately \$13,000.00 was transferred to the DMV for the motor carrier for administering the petroleum tax. The reimbursement of claims the Board approved at the last board meeting was approximately \$4.69 million.

Ms. King reported on the total liabilities. The liabilities are cost that the Fund is expected to incur throughout 2012. Transfer to the Highway Fund is expected to be approximately \$3 million. The staff operations for NDEP are expected to be approximately \$267,000. Approximately \$46,000 is for pending obligated claims. These are claims the Board approved for payment at the last Board meeting. Total obligations are approximately \$4.9 million. The actual funds available are approximately \$11.9 million.

VI. SITE SPECIFIC BOARD DETERMINATION

A. Site Specific Board Determination No. C2012-04 Site Specific Board Determination to Provide Third Party Liability Coverage to The Waterhole, 475 N. Moapa Valley Blvd., Overton, NV Facility ID No. 8-000974, Petroleum Fund Case ID No. 1999000273

Mr. Bridwell presented this Site Specific Board Determination (SSBD). On September 10, 2003, full petroleum fund coverage was granted to this project for the release of gasoline from one underground storage tank system. Coverage was granted with a 40% reduction and a 10% copay, resulting in a reimbursable cap of \$540,000. As of this Board meeting, the subject site has been reimbursed \$540,000.

Despite progress in remediating the site, contamination remains at concentrations in excess of state action levels. Because the contamination has been detected off-site and created a potential for third party liability, third party liability monies have been requested. On February 16, 2012, NDEP received a written request from Mr. V.K. Leavitt, the owner of The Waterhole requesting to be provided third party liability coverage.

The owner/operator has acknowledged that using third party liability funds for corrective actions will reduce the remaining funds in the event of a third party lawsuit.

Mr. Bridwell stated that NDEP recommends that the subject facility receives third party liability funds to use for remediation efforts. This will provide a reimbursement cap of \$1,080,000, which reflects \$2,000,000 in Fund coverage with a 40% reduction and a 10% co-pay.

Mr. Bridwell notified the Board that a claim is listed in the agenda as a non-consent item under the Ongoing Cases/Other Products category, item number 48. The recommended reimbursable amount shown for The Waterhole is contingent upon the Board adopting this SSBD.

Mr. Mulvihill moved to approve Site Specific Board Determination C2012-04, granting Third Party Liability Fund Coverage, subject to the 40% Board reduction and 10% co-pay. Mr. Seidel seconded the motion. Motion carried unanimously.

**B. Site Specific Board Determination No. C2012-05
Site Specific Board Determination to Provide Reduced Petroleum Fund Coverage to
7-Eleven #26627, 3501 E. Bonanza Rd. Las Vegas, NV
Facility ID No. 8-000619, Petroleum Fund Case ID No. 2012000003**

Mr. Bridwell stated that on August 24, 2010, the automatic tank gauge leak detection system at the site went into alarm for one of the tanks. The next day 7-Eleven had the tank “precision tightness tested” as a follow up to the failed alarm. The tank failed and was immediately taken out of service.

Mr. Bridwell stated that two days after the testing, 7-Eleven pumped the product out of the failed tank. On September 9, 2010, 6,000 gallons of product were delivered back into the failed tank. On September 15, 2010, six days following the delivery, 7-Eleven once again had the failed tank pumped of its product.

Mr. Bridwell stated that in December 2010, the failed tank was permanently closed in place. A release from the failed tank was verified when analyses of soil samples recovered during tank closure activities indicated the presence of contamination above State action levels. Subsequent assessment activities verified that groundwater at the site had also been impacted by the failed tank.

Mr. Bridwell stated that on September 11, 2011, NDEP received a Fund coverage application from 7-Eleven for the failed tank. Delivering product back into a UST that had failed precision tightness testing, unless it has been repaired, is a violation of Federal Regulation 40 CFR 280.62. The September 9, 2010 product delivery event to the failed tank therefore constitutes a violation of this federal regulation. Pursuant to Resolution #94-023, NDEP is required to recommend a 40% reimbursement reduction for sites which are non-compliant with 40 CFR 280.62.

NDEP recommends that the subject facility receive Fund coverage with a 40% reduction. Should the Board adopt this recommendation Fund coverage will be granted in the amount of \$540,000 which reflects \$1million in petroleum fund coverage minus the 10% copay.

Mr. Bridwell noted there was no claim associated with this site at today's meeting.

Mr. Matthew Grandjean of Stantec representing 7-Eleven, Inc. introduced himself and Mr. Mark Westfall, the gasoline and environmental construction manager for 7-Eleven. Mr. Grandjean stated that 7-Eleven did everything correct. It was unfortunate that its contractor was negligent and put the gas back into the failed tank. He stated that 7-Eleven understands it must take responsibility.

Mr. Grandjean stated that 7-Eleven initially had no knowledge that the product delivery incident had occurred. Once 7-Eleven was aware of the incident, the gas was immediately pumped out of the tank. He believed the limited extent of contamination at the site was the result of a failure in the upper portion of the tank.

Mr. Grandjean stated it is unreasonable to assume this event caused significant impact to the site and the 40% reduction will exceed the cost of the assessment or remediation efforts.

Ms. Cripps asked who is responsible for locking out the tank once it has failed and has been pumped out.

Mr. Grandjean responded it is the responsibility of 7-Eleven's contractor. There are two contractors: a delivery contractor and a maintenance contractor. The maintenance contractor should have locked the tank out. When the delivery driver showed up he would know when the lid was opened that he should not introduce product into the tank.

Ms. Cripps asked if there was anyone at the site to verify the contractor had locked out the tank.

Mr. Westfall indicated to Mr. Grandjean that it was confirmed the tank had been locked out. Mr. Grandjean stated that generally the people at the store do not get involved with this process. Usually between Stantec, 7-Eleven and its contractors there are checks and balances in place to make sure it will not happen.

Ms. Cripps inquired if the checks and balances, in this case, did not work.

Mr. Grandjean stated that in this instance they did not work.

Vice Chairman Ross asked if their contract with the contractors indemnify 7-Eleven for their negligence.

A very brief discussion took place in the Las Vegas venue. The volume was too low be recorded with the audio equipment.

After the very brief discussion, Vice Chairman Ross questioned if 7-Eleven's coverage was reduced, would the contractor be liable to 7-Eleven for the 40%? Would 7-Eleven have to go to court or would that be part of the contract once 7-Eleven has proven that the contractor has cost them money?

Ms. Tappan asked what 7-Eleven and Mr. Grandjean's response was to Vice Chairman Ross.

Mr. Grandjean responded by saying that he believed it had previously been done. He stated that 7-Eleven had, in the past, approached its contractors, however, he did not know what the outcome was.

Chairman Haycock stated that 7-Eleven did everything correct, it was the maintenance person who did not lock it out.

Mr. Grandjean stated that was correct. It was confirmed to 7-Eleven that it was locked out. Everything on 7-Eleven's side looked as if it had been done.

Chairman Haycock asked who confirmed that it had been locked out.

Mr. Grandjean stated it was the maintenance person.

Vice Chairman Ross asked, "Because 7-Eleven thought it had been locked out, nobody from 7-Eleven called the delivery people to say don't deliver to that tank?"

Mr. Grandjean stated that was incorrect. 7-Eleven did stop deliveries right away. However, they were still delivering to the two other tanks. Mr. Grandjean stated the delivery driver may not have been aware that he should not deliver to that tank. If the driver shows up and the tank is not locked out, then he may mistakenly deliver fuel to that tank.

Chairman Haycock asked Mr. Westfall if he felt that it was the driver or dispatch error.

Mr. Westfall stated that 7-Eleven requested that both the local gasoline contractor and the distribution company cease deliveries and lock out the tank. It was 7-Eleven's understanding, pursuant to confirmation from the gasoline contractor, that the lockout had occurred. 7-Eleven also received confirmation from the supply transportation office that deliveries were not to be made to that tank. 7-Eleven did not direct anyone to put fuel back into that tank. He stated that no one is stepping up to take responsibility. 7-Eleven assumes the contractor failed to lockout the tank properly to the point where the delivery driver, upon arrival, assumed that the tank could receive product and unknowingly made a delivery to the wrong tank. 7-Eleven, while it is taking responsibility for the underground storage system, feels the reduction in the claim is excessive for actions that were beyond their ability to control at the time.

Chairman Haycock stated that he heard two different things from Mr. Westfall and Mr. Grandjean. First, 7-Eleven's internal maintenance person was responsible for locking the tank out.

Mr. Grandjean stated it was a contracted person.

Chairman Haycock said, "okay, your position then is that 7-Eleven contracted certain things to be done that either weren't done or were done in error. 7-Eleven really didn't do anything but react in the appropriate manner."

Mr. Grandjean stated he was correct.

Chairman Haycock asked if the result was a release of 16 gallons of product. Mr. Grandjean stated that was what the inventory records show.

Chairman Haycock asked Mr. Grandjean, as the CEM, if he agreed with that.

Mr. Grandjean stated he did.

Chairman Haycock stated the 40% is not meant to offset the incremental costs. The 40% is punitive for doing the wrong thing. Chairman Haycock agreed it is a lot of money to impose upon a tank owner and operator that essentially did not do anything wrong. On the other hand, somebody did do something wrong or failed to do something or else this would not have happened. It was very fortunate that it was only a minimal amount of product.

Ms. Cripps commented that she would like to hear from the staff and get their response to some of the comments that were made. Particularly about the volume of product released and how significant it was.

Ms. Cripps stated that from her perspective, 7-Eleven is responsible for its contractors but agreed the amount seemed stringent. She stated 7-Eleven should have the ability to recoup those costs from its contractors through established contracts.

Ms. Cripps stated that she is leaning towards the staff recommendation.

Chairman Haycock asked Mr. Bridwell if he concurred with the volume of escaped product.

Mr. Bridwell stated that he had seen the inventory records. Inventory is not an exact science. The product will expand and contract pursuant to changes in temperature. The actual inventory information that Mr. Bridwell observed were in units of "inches" of product and there was no change. If 7-Eleven does believe it was a 16 gallon release, taking everything else into account, 16 gallons is not a reportable quantity.

Mr. Bridwell stated that he agreed that 40% would be excessive for this particular situation.

Chairman Haycock indicated the product was delivered into the tank. Within six days of discovery, the product was taken out of the tank. Had the tank been used at all?

Mr. Grandjean stated no.

Chairman Haycock noted there was therefore no use or benefit accrued by 7-Eleven.

Mr. Westfall stated there was not.

Ms. Cripps asked what the staff would recommend.

Mr. Bridwell stated that staff's recommendation would be a 40% reduction. The resolution requires that Staff recommends a 40% reduction. However, Mr. Bridwell stated that speaking as a staff member, a case officer, petroleum fund person, he believes the 40% would be excessive.

Ms. Tappan asked if the cleanup would cost more than \$540,000.

Mr. Grandjean stated that it was very early in the project. However, given the magnitude of impact they had detected, he did not anticipate it costing that much. There are three wells that are in place. The preliminary analytical numbers that came back were limited.

Ms. Tappan asked if the Board went with the 40%, if the cleanup costs \$500,000, 7-Eleven would receive the full \$500,000 or is it 40% of the \$500,000.

Mr. Bridwell stated a 40% reduction along with the 10% copay results in 54 cents on the dollar being reimbursed. Therefore, if 7-Eleven were to be reimbursed the \$540,000 they would need to spend \$1,000,000.

Mr. Mulvihill asked Mr. Bridwell his professional opinion regarding what an appropriate reduction would be.

Mr. Bridwell stated that based on his 17 plus years of experience, he did not believe a reduction was warranted.

Ms. Tappan asked about the insurance coverage that the contractors have to cover items like this.

Mr. Westfall stated reimbursements to 7-Eleven for any issues related to this would take legal recourse. Mr. Westfall stated he hoped that the Board would appreciate what that would represent to the relationship involved. The contractor in Reno is small and he did not think that it could absorb a huge amount of reimbursement to 7-Eleven without causing the business to fail. The hauler is a multi-state company. 7-Eleven would have to take legal recourse to receive any reimbursement.

Vice Chairman Ross stated that he sympathizes with 7-Eleven, however, his own professional work is that of a contractor. He has very strict rules in his contracts. If he violates any of his contracts he will lose those clients. There are procedures in place so that will not happen. Vice Chairman Ross said if the only thing to worry about were relationships, many issues would not be resolved.

Chairman Haycock asked Vice Chairman Ross if he thought there was as appropriate reduction based upon his last comments.

Vice Chairman Ross stated he would be amenable to a 20% reduction. He said 7-Eleven made a case and he understands where 7-Eleven is coming from. At the same time, he wants to make sure that 7-Eleven tells the contractor it negatively impacted 7-Eleven financially and change is necessary to ensure it will not happen again.

Chairman Haycock asked if there were any more comments regarding a 20% reduction. The Chairman stated he did not disagree with the 20% reduction.

Vice Chairman Ross moved the 40% reduction be changed to a 20% reduction related to Site Specific Board Determination No. C2012-05. Mr. Mulvihill seconded the motion.

Mr. Seidel asked what 7-Eleven's history was regarding tank spills. Did 7-Eleven breach a corrective action plan?

Mr. Bridwell replied that the tank in question was a single wall fiber glass tank that had been installed in 1986. NDEP staff has been seeing many of these old single wall fiber glass tanks failing.

Mr. Bridwell stated that 7-Eleven reacted appropriately with the exception of what its contractor did. The history of 7-Eleven for these types of things is that they have happened in the past. Mr. Bridwell stated he was not aware of any recent issues associated with requesting petroleum fund coverage. Mr. Bridwell stated that 7-Eleven is a huge retailer in the State of Nevada. Therefore, the more work you do the more chances for a mistake.

Ms. King informed the Board that compliance is determined by the LUST staff. Ms. King stated that NDEP had LUST staff present in the Las Vegas location that were familiar with the site and would be able to provide further detail if Mr. Seidel would like.

Mr. Seidel stated he was satisfied with the information he had.

Chairman Haycock stated a motion and a second were on the table. He asked if there was further discussion relative to the motion.

There were none.

Chairman Haycock restated the motion was to adjust the recommended 40% reduction to a 20% reduction.

Motion carried unanimously.

VII. BOARD POLICY RESOLUTION

A. Board Policy Resolution No. 2012-06

Resolution to Establish Criteria for Reconsideration of a Site Specific Board Determination

Ms. King stated that during the March Board meeting the Board requested NDEP to draft a resolution that establishes criteria for when NDEP should recommend to the Board to reconsider an existing Board Determination, as requested by a tank owner/operator.

Ms. King stated the issue that triggered this Board directive was the request from a tank owner to reduce or eliminate his existing coverage reduction that the Board had voted on in 2003. The Board requested that NDEP, in drafting the resolution, give consideration to economic hardships on a tank owner and also address equity and consistency.

Ms. King informed the Board that NDEP had prepared 2 alternative approaches for the Board's consideration. The first alternative is in direct response to the Board's direction with respect to the economy. This alternative is ready for immediate action.

Ms. King informed the Board the second alternative was drafted after comments regarding the first alternative had been received from the public. NDEP took into consideration both the public's comments as well as the Board's intended purpose of reconsidering an existing coverage reduction determination.

Ms. King went over the first alternative that was immediately ready for Board action. NDEP explored the economic based criteria for the reconsideration of an existing determination. In the end, NDEP could not find an economic metric to use to accurately identify when the economy is good vs. bad. She stated that economists cannot agree on a given metric.

With respect to fairness, in treating everyone the same, large corporations would be treated the same as small businesses. NDEP did not see a way that an economic metric could be applied across the board fairly. In addition, there is an issue of remediation sites that have previously closed. With respect to fairness, how, or would they benefit from a change in policy based on economy? In conclusion NDEP found that an economic based metric would not be useful for this purpose.

What the proposed resolution does is allow for NDEP to make a recommendation to the Board to reconsider an existing determination only if new information is provided that was not presented when the original determination was made if good cause exists why it was not presented.

The second alternative is not ready for action at this meeting. If the Board opts for this approach, which was drafted much later than the first alternative, NDEP will require more time to develop it so it is equitable and consistent across the board.

Ms. King stated the Petroleum Fund has traditionally functioned as a compliance encouragement tool for Storage Tank compliance, which is necessary to help prevent releases to the environment. The purpose of Petroleum Fund is to ultimately clean up releases that have occurred in the environment. Therefore, why not allow the Fund to function as a compliance encouragement tool on the back end when a release occurs remediation is required by law.

Ms. King explained the second alternative further. It takes into consideration the criteria of the first alternative, new information, and adds criteria regarding compliance with the required corrective actions (remediation) that must be completed after a release has occurred. This alternative approach allows for the Fund to be a compliance encouragement tool for both Tank compliance and Remediation compliance.

Ms. King stated if the Board is in favor of this approach, NDEP will require additional time to work with industry and the consulting community to identify what a good definition of corrective action compliance is, for this purpose, in a way that it could be applied equitably and consistently across the board.

Ms. Reynolds said she wanted the Board members to know, with respect to the “new information” criterion that is was not simply just new information. It was new information in addition to good reason existing for why the information had not been presented to the Board when it deliberated and voted on the original determination. She stated it is a two-step process.

Ms. King stated that was correct.

Ms. Cripps asked if the Board currently has the authority to reevaluate a determination based on new information.

Ms. King stated it does. However, in response to the Board’s directive to draft the resolution, NDEP took into account only the factors requested by the Board. The economy did not turn out to be a usable metric but new information, and potentially compliance with remediation could be used for NDEP to make a recommendation.

Mr. Mulvihill said he thought he started this at the last meeting when he asked staff for some guidance related to a particular case that had been tabled. The situation was that somebody had purchased a property wherein the seller had not been responsible in

notifying NDEP about a problem. The current person is the new owner and was branded with the uncooperative label. Yet he had been cooperative along the way. The existing resolutions on the book do not preclude us from looking at individual cases correct?

Ms. King stated that is correct. The Board has the authority to reconsider anything that is brought before them. The resolution would only help staff to make a recommendation whether the Board should reconsider or not.

Mr. Mulvihill said it was not his intent to give someone a free pass just because the economy goes up and down. It was to provide some sort of direction if someone acquired a bad site and was working to fix it up. If they purchase a property and do proper due diligence, they should know what they are getting into and what the mess is. However, we do not want them to be discouraged from reporting to the Division.

Mr. Mulvihill said he was not sure if either one of these are a direction to go at this time. Maybe just stay with the individual evaluations that come forward.

Ms. King thanked Mr. Mulvihill and said in response to the scenario that Mr. Mulvihill provided, that would be information that the Board would have had when making its original determination. In the case of a facility that requested reconsideration during the March meeting, when its original determination was made in 2003 NDEP recommended a 40% reduction. The Board did not want to penalize an owner who had done nothing wrong, yet did not believe the Fund should pay for someone else's negligence. The Board therefore split the difference. The Board reduced it from the recommended 40% to a 20% reduction. That type of information will typically be presented to the Board prior to the initial determination when NDEP makes its recommendation for a coverage reduction. The Board has the authority to decide if the recommended reduction should be applied or not.

Mr. Mulvihill addressed the Chairman and stated he appreciated the staff's work in particularly getting input from industry. He said we may be trying to fix something that is not broken and perhaps nothing needs to be done.

Ms. Reynolds stated the following: The draft resolution should go in the direction the Board chooses. She thinks it is good to notify the public what type of criteria the Board is interested in when they get a request for reconsideration. Right now there is nothing on the books that tells the public what the Board wants to see if they bring a case back for reconsideration. If somebody wants to come to the Board and plead poverty, will that be a good reason to bring back a case for the Board to look at. If you adopt this resolution the answer is no. Whether or not you agree with the criteria you still need some kind of resolution that sets forth criteria for when the Board will reconsider a decision. Otherwise the Board could be inundated with requests. Somebody could be asking for a reconsider from 5 years ago unless they know what the Board is interested in. This gives the public as well as staff a way to evaluate those cases.

Vice Chairman Ross commented on small businesses. He said a person cannot readily distinguish or discriminate between different players. He stated that when he joined the Board the policies were all laid out. The importance of the policies is exactly what the Attorney General's representative just said, which is that consistency is important. He said if a precedent is set, we have good reason for the precedent. Policies are set for consistency so people with like issues will be dealt with in a consistent manner to avoid any appearance of favoritism, arbitrariness or capriciousness.

Vice Chairman Ross said he agreed that it would be a good idea to have a policy. He was not sure if this is the correct one. However, he does appreciate all of the work that went into it and the thought. If he had to react to the second one in front of him, he would say, it should be “AND” 5 years of good practice opposed to an “or”. Because we do not want to carelessly give away Fund money and conversely, we do not want to make it something that is difficult.

Mr. Lovato, the Chief of the Corrective Actions Bureau, stated that there are currently 14 total cases that have received reductions that this might apply to, which is not very many. In those cases, the Fund could act as a corrective action compliance encouragement tool. If people knew that was out there, it would encourage people to move along. Still left to do is to specifically identify what compliance means. If you missed one letter or one deadline does that mean you are out of compliance? NDEP staff wants to work to define exactly what that means and get some input from the consulting community and industry, and then bring it back to the Board for consideration.

Ms. Cripps ask Mr. Lovato if, under these conditions, the wording should be “new information ‘or’ demonstration of compliance” so it could be applied more broadly and could be used as a corrective action compliance tool.

Mr. Lovato stated yes.

More discussion ensued regarding whether the word “and” or the word “or” should be used in the draft resolution to determine if LUST compliance must be in addition to new information or can stand alone as a criteria for NDEP to recommend the Board should reconsider an existing determination

It was decided that no action would be taken at this meeting. NDEP was directed to continue development of the resolution pursuant to the discussion that took place. NDEP is to bring a revised draft of the resolution to the Board for its consideration at the September meeting.

VIII. AMENDED BOARD POLICY RESOLUTIONS

A. Board Policy Resolution No. 2012-07

Providing Clarification Regarding Petroleum Fund Reimbursement for Releases Caused by Product Delivery Spill and Overfill Events, Superseding Existing Board Resolutions No. 93-002 and No. 97-012

This proposed policy resolution is presented to the Board pursuant to their request that Fund staff re-visits existing board policy resolutions and recommend updates and modifications, as appropriate. In this case, NDEP is recommending that two existing board policy resolutions, No. 93-002 and No. 97-012, are combined, therefore, presenting the policies established by these resolutions into one resolution, which if adopted, will supersede the earlier policies. Both Board Resolution No.’s 93-002 and 97-012 discuss and present Fund policy regarding reimbursement for contamination at sites which emanated from petroleum UST system product delivery spill and/or overfill events.

Resolution No. 93-002, which was adopted by the Board at the December 16, 1993 meeting, states that corrective action costs for contamination resulting from spills and overfill events are not eligible for Fund reimbursement. This Resolution was adopted prior to the December 22, 1998 implementation date prescribed by federal regulations

requiring that petroleum UST systems be equipped with spill and overfill prevention equipment.

Resolution No. 97-012, which was adopted by the Board at the September 12, 1997 meeting, states that the Board will allow Fund coverage for accidental releases associated with the failure of petroleum UST system spill and overfill prevention equipment, if the equipment was installed pursuant to the performance standards established in federal regulations, and in the absence of gross negligence as determined by the Board. Resolution No. 97-012 additionally states that the Board shall not allow Fund coverage for releases associated with product spill and overfill events for petroleum UST systems that do not possess spill and overfill prevention equipment. This resolution was also adopted prior to the December 22, 1998 implementation date prescribed by federal regulations, requiring that petroleum UST systems be equipped with spill and overfill prevention equipment. Because NDEP considers spill and overfill equipment to be part of a UST system. Resolution No. 97-012 was authored in anticipation of the implementation deadline.

Proposed board policy Resolution No. 2012-07 preserves, combines and further clarifies policies established in Resolution No.'s 93-002 and 97-012. It also provides additional language regarding facilities which continue to operate petroleum UST systems with known faulty spill and/or overfill equipment. Specifically, proposed board policy Resolution No. 2012-07 proposes to sets forth the following policies.

The costs for remediating accidental releases associated with the failure of petroleum UST system spill and/or overfill prevention equipment installed pursuant to the performance standards established in federal regulations (40 CFR 280.20 & 21), and in the absence of gross negligence as determined by the Board, are Fund-reimbursable.

The costs for remediating releases resulting from the lack of petroleum UST system spill and/or overfill prevention equipment are not Fund-reimbursable.

The costs for remediating releases caused by the known operation of a petroleum UST system with faulty spill prevention and/or overfill protection equipment, if not repaired or replaced pursuant to regulatory agency directives, are not Fund-reimbursable. In this case, if a regulatory UST compliance inspector identifies faulty spill and/or overfill prevention equipment during an inspection, and if said equipment is not repaired or replaced pursuant to regulatory deadlines, costs for the cleanup of contamination caused by spill/overfill events are not Fund eligible.

Chairman Haycock indicated in Mr. Bridwell's presentation he stated costs for remediating a release caused by the known operation of a UST system with faulty spill prevention and/or overfill protection equipment are not reimbursable. Chairman Haycock said if an operator knows he has faulty equipment and no one from the agency has been out there to tell them to have it repaired, then he has no directive to comply with. Then he has an overfill caused by the faulty equipment. Is it or is it not reimbursable?

Mr. Bridwell stated in that case the owner would be operating without being aware that he has faulty equipment.

Chairman Haycock stated not necessarily. He could be aware that he has faulty equipment.

Mr. Bridwell said that could be. However, if he has not been notified by the regulatory agency that he needs to repair or replace, he does not have to do anything.

Chairman Haycock stated that elimination of the word known is probably appropriate. By the way this was written and based on your comment, you are saying, that until he is given a sort of directive to repair or replace it, it does not matter if it is faulty or not or we assume he does not know that it is faulty.

Mr. Bridwell replied that it did matter. He gave an example of a faulty spill bucket which would be easy to operate without knowing that it was faulty. The owner/operator is not guilty of anything. The inspector comes and notifies the owner/operator that the spill bucket is faulty and gives them 30 days to replace the faulty spill bucket. If the faulty spill bucket is not replaced within that deadline, then they are knowingly operating out of compliance. Then if they file a Petroleum Fund coverage application and contamination from the spill bucket is part of the problem, that portion of the contamination does not become reimbursable.

Chairman Haycock asked Mr. Bridwell if he envisioned a scenario where it was obvious that the spill bucket was broken and would not protect spillage. Where any prudent person would know, yet they would continue to operate. You do not envision that situation. You are basically saying until a regulator comes out and tells you it's broken we are going to assume you do not know it's broken.

Mr. Bridwell said there are good players and there are bad players.

Chairman Haycock asked if based on this they will be covered.

Ms. King informed Mr. Haycock that Fund staff does not make compliance decisions. Fund staff looks to the regulatory staff which goes out and completes the inspections to determine compliance. We base our recommendations to you on the compliance determination made by that group.

Chairman Haycock said he understands.

Ms. Cripps asked if, based on the previous discussion, is the Board leaving it as is or suggesting to eliminate the word "known?"

Chairman Haycock said he's fine with the wording.

Ms. Cripps moved to adopt Resolution No. 2012-07 as proposed by staff. Vice Chairman Ross seconded the motion. Motion carried unanimously.

B. Amended Resolution #99-22

Resolution to Adopt a Policy Providing Reduced Petroleum Fund Coverage for Petroleum Storage Tank System with Comingled Contamination from both Fund Eligible and Non-Fund Eligible Release Sources

Mr. Bridwell said this proposed amended board policy Resolution No, 99-22. In this case we wish to keep the original resolution but amend it. This is to adopt the policy providing reduced fund coverage for petroleum fund tank system releases with comingled contamination from both fund eligible release sources and non-fund eligible release sources.

Original Board Resolution No. 99-22 established a policy that allowed Fund staff to recommend reduced Fund coverage for sites where contamination was the result of both a Fund eligible release source and from non-Fund eligible petroleum UST system product delivery spill and/or overfill events. Amendments proposed to this resolution will provide a mechanism for Fund staff to recommend reduced fund coverage for sites where contamination emanated from both a fund eligible release source and from any non-fund eligible release source, not just spill and/or overfill.

The original board Resolution No. 99-22 established the following policies for fund reimbursement which is provided to sites with contamination from a fund eligible release source and from non-fund eligible UST system product delivery spill and/or overfill events.

If the contamination from the spill/overfill events can be identified and separated from the fund eligible release source contribution, the spill/overfill contamination can be removed and remediated separately. Costs for this activity would not be proposed on Not-to-Exceed cost proposals nor claimed for reimbursement. An example of this would include a site where non-reimbursable spill contamination is localized to soil only and is easily identified during underground storage tank removal activities. Therefore, that portion of the contaminated soil can be removed, remediated separately never requested for reimbursement. As a contingency to this, it has to be easily identifiable, removed and of course it cannot come along with any other contamination from the fund eligible release source.

In cases where the spill/overfill contamination has only impacted soil, and the amount of contaminated soil can be identified, but cannot be removed and remediated separately, meaning that the non-fund eligible portion of soil contamination will be remediated concurrent with fund-eligible contamination, it may be possible to determine the percentage of non-fund eligible contamination. In this case, fund coverage would be recommended with a reduction based on this percentage.

In cases where the spill/overfill component of contamination has come along with fund eligible contamination and has impacted groundwater, the non-fund eligible component cannot be removed and remediated separately nor can a percentage contribution be determined. In this case, Resolution 99-22 authorized Fund staff to recommend a standard 20% reduction in Fund coverage.

The amended version of board Resolution No. 99-22 being proposed to you today, the same policies governing the non-fund reimbursable spill/overfill events just described would be expanded to apply to any non-fund eligible release sources. Non-fund eligible petroleum storage tank system release sources include, but are not limited to the following.

Releases resulting from a lack of spill or overfill prevention equipment.

Releases resulting from the known operation of a petroleum storage tank system with faulty spill or overfill prevention equipment if not repaired or replaced pursuant to regulatory agency directives.

Product dispenser releases which emanate from above the shear valve (NAC 590.710(g)).

Releases which emanate from petroleum storage tank systems which are not enrolled in the Fund at the time of release discovery (NAC 590.730(4)).

Petroleum storage tank system releases which were discovered prior to the establishment of the Fund.

Non-accidental releases caused from petroleum storage tank system owner, operator or vendor neglect.

Releases caused by vandalism.

Releases from failed petroleum storage tank components which are covered under a manufacturer or vendor warranty.

Additionally, if coverage for the Fund eligible release is reduced pursuant to board Resolution No. 94-023 due to non-compliance issues, that reduction will be added to any coverage reduction recommended pursuant to Resolution No. 99-22. Cases will also be subject to the 10% copay.

It is important to note that adoption of amended Resolution No. 99-22 will not change the way we would implement the existing Resolution No. 99-22 with respect to non-compliance issues. In many cases, having a non-fund eligible release at a site is not a violation of state or federal regulations. Therefore, the 20% reduction for non-fund eligible sources should not be interpreted as a non-compliance-based reduction. Adoption of amended Resolution No. 99-22 will expand the scope of scenarios for which NDEP can recommend coverage at sites, and will therefore be a benefit to tank owners and operators who need Fund coverage. It will provide a mechanism for Fund staff to recommend coverage for sites which may not have been able to obtain any Fund coverage in the past.

Mr. Mulvihill asked staff about the non-fund eligible listing in paragraph 5. He said most of these items seem to be in the control of the owner as a result of his actions, neglect or lack of actions. The one item that seems to be different is the release caused by vandalism. He asked if staff could comment.

Mr. Bridwell said historically staff will not recommend reimbursement for vandalism. Staff will recommend reimbursement for regulatory required situations. The petroleum fund encourages installation of containerized systems, security, and lighting. The petroleum fund will reimburse for that. If the system is vandalized then the owner/operator should pursue their insurance company.

Mr. Mulvihill noted that the Petroleum Fund is paying for the owner/operator to be proactive and if that person's system is vandalized there will be other insurance to cover the damages.

Mr. Bridwell said yes.

Mr. Mulvihill moved to adopt Resolution No. 99-22 as amended by staff. Mr. Seidel seconded the motion. Motion carried unanimously.

IX. ADOPTION OF CONSENT ITEMS

The Board will review all items as a consent calendar item, unless the item is marked by an asterisk (*), or a member of the public wishes to speak in regards to the item.

A dagger (†) indicates previously disallowed monies have been appealed where the requested amount is less than the recommended amount.

STATE BOARD TO REVIEW CLAIMS REQUESTED/RECOMMENDED AMOUNTS – JUNE 14, 2012

<u>HEATING OIL</u>				<u>REQUESTED</u>	<u>RECOMMENDED</u>
FOR POSSIBLE ACTION	1.	1992000102H	Lyon County School District: Yerington Elementary	\$16,935.92	\$16,935.92
FOR POSSIBLE ACTION	2.	2007000013H	Churchill County School District: Bus Barn	\$6,680.79	\$6,680.79
FOR POSSIBLE ACTION	3.	2012000001H	Roy Engelke: Engelke Property	\$2,305.00	\$2,305.00
FOR POSSIBLE ACTION	4.	2012000010H	701 South Virginia LLC: Midtown Retail	\$11,787.15	\$11,197.90
FOR POSSIBLE ACTION	5.	2012000013H	Charles Bluth: Bluth Property	\$9,253.32	\$9,003.32
FOR POSSIBLE ACTION	6.	2012000014H	Richard Behlmer: Behlmer Residence	\$3,638.98	\$3,388.98
FOR POSSIBLE ACTION	7.	2012000015H	Don Sinnar: Sinnar Residence	\$2,458.00	\$2,203.25
FOR POSSIBLE ACTION	8.	2012000017H	Churchill County School District: Old High School	\$60,082.70	\$56,841.06
FOR POSSIBLE ACTION	9.	2012000021H	Renown Health: Renown Property	\$15,003.72	\$14,753.72
HEATING OIL SUB TOTAL:				<u>\$128,145.58</u>	<u>\$123,309.94</u>
<u>NEW CASES, OTHER PRODUCTS</u>				<u>REQUESTED</u>	<u>RECOMMENDED</u>
FOR POSSIBLE ACTION	1.	2011000009	Cimarron West: Cimarron West	\$73,272.38	\$59,294.56
FOR POSSIBLE ACTION	2.	2012000004	7-Eleven, Inc.: 7-Eleven #15426	\$43,680.95	\$39,312.85
FOR POSSIBLE ACTION	3.	2012000011	Golden Gate Petroleum: Baldini's Grand Pavilion	\$14,907.30	\$13,236.57
FOR POSSIBLE ACTION	4.	2012000012	Dewey Has Gas, Inc.: Smart Mart	\$22,807.46	\$20,477.21
NEW CASES, OTHER PRODUCTS SUB TOTAL:				<u>\$154,668.09</u>	<u>\$132,321.19</u>

ONGOING CASES/OTHER PRODUCTS

<u>ONGOING CASES/OTHER PRODUCTS</u>			<u>REQUESTED</u>	<u>RECOMMENDED</u>	
FOR POSSIBLE ACTION	1	1992000056	Reno Tahoe Airport Authority: National Car Rental	\$19,069.46	\$19,063.81
FOR POSSIBLE ACTION	2.	1993000011	7-Eleven, Inc.: 7-Eleven #29646	\$118,798.70	\$114,319.70
FOR POSSIBLE ACTION	3.	1993000103	Russell Yardley: Charlie Brown Construction	\$14,737.93	\$14,443.17
FOR POSSIBLE ACTION	4.	1993000115	City of Fallon: Former Bootlegger Texaco	\$2,900.00	\$2,900.00
FOR POSSIBLE ACTION	5.	1994000003	Allied Washoe: Allied Petroleum	\$12,458.38	\$12,430.40
FOR POSSIBLE ACTION	6.	1994000012	Wirtz Beverage Nevada, Inc.: Former DeLuca Liquor	\$39,649.40	\$39,649.40
FOR POSSIBLE ACTION	7.	1994000027	7-Eleven, Inc.: 7-Eleven #19653	\$41,656.76	\$41,656.76
FOR POSSIBLE ACTION	8.	1994000037	Param Investments and or Broadbent: Gofer Market	\$110,968.16	\$110,968.16
FOR POSSIBLE ACTION	9.†	1994000065	Avis Rent-A-Car Systems: Avis Rent-A-Car	\$82,001.21	\$94,485.91
FOR POSSIBLE ACTION	10.	1994000113	Pilot Travel Centers, LLC: Former Unocal Truck Stop	\$44,215.14	\$44,215.14
FOR POSSIBLE ACTION	11.	1994000122	Ron or Gary Michelsen: Mike's Gas-A-Mart	\$30,835.65	\$30,835.65
FOR POSSIBLE ACTION	12.	1995000012	Northern Nevada Asset Holdings: Parker's Model T	\$7,984.83	\$7,186.35
FOR POSSIBLE ACTION	13.	1995000074	Vera Hester: Glendale Service Facility	\$27,766.43	\$24,946.88
FOR POSSIBLE ACTION	14.	1995000105	Redman Petroleum Corp.: Redman Petroleum	\$14,744.70	\$13,270.23
FOR POSSIBLE ACTION	15.	1995000142	7-Eleven, Inc.: 7-Eleven #29644	\$17,817.82	\$16,036.03
FOR POSSIBLE ACTION	16.	1996000026	Moapa Valley Federal Credit Union: Former Russ Auto	\$29,746.70	\$21,415.25
FOR POSSIBLE ACTION	17.	1996000037	Kumiva Group, LLC: Former Armored Transport	\$14,285.98	\$10,285.90
FOR POSSIBLE ACTION	18.	1996000063	Joan Pennachio: V&V Automotive	\$6,839.66	\$6,155.69
FOR POSSIBLE ACTION	19.	1996000064	H&A Esslinger, LLC: Red Rock Mini Mart	\$31,363.85	\$24,560.43
FOR POSSIBLE ACTION	20.	1996000101	Phillips 66 Company: Circle K #695	\$21,305.16	\$19,149.18
FOR POSSIBLE ACTION	21.	1996000102	Phillips 66 Company: Circle K #542	\$3,501.47	\$2,521.06
FOR POSSIBLE ACTION	22.	1997000008	Ewing Brothers, Inc.: Ewing Brothers Facility	\$3,242.50	\$2,918.25
FOR POSSIBLE ACTION	23.	1998000046	Willdens Automotive Holdings: Allstate Rent A Car	\$66,847.51	\$60,162.76
FOR POSSIBLE ACTION	24.	1998000068	Phillips 66 Company: Company: Conoco #28003	\$21,853.70	\$19,588.86
FOR POSSIBLE ACTION	25.	1998000073	City of Reno: Reno Police Station	\$5,393.39	\$5,393.39
FOR POSSIBLE ACTION	26.	1998000080	Seven Crown Resorts: Echo Bay Resort	\$2,866.50	\$2,579.85
FOR POSSIBLE ACTION	27.	1999000011	Terrible Herbst Oil Company: Terrible Herbst #133	\$15,370.95	\$13,833.85
FOR POSSIBLE ACTION	28.	1999000015	Terrible Herbst Oil Company: Terrible Herbst #144	\$17,490.54	\$14,094.48
FOR POSSIBLE ACTION	29.	1999000017	Reed, Inc.: Reed R-Place Shell	\$11,065.94	\$9,959.35
FOR POSSIBLE ACTION	30.	1999000022	Terrible Herbst Oil Company: Terrible Herbst #129	\$9,605.75	\$8,645.18
FOR POSSIBLE ACTION	31.†	1999000048	Estate of Robert Cowan: Former Lightning Lube	\$4,085.73	\$4,544.73
FOR POSSIBLE ACTION	32.	1999000052	Estate of Martin Wessel: Ted's Chevron	\$12,650.29	\$11,369.06
FOR POSSIBLE ACTION	33.	1999000061	Rich Sorani: Former Rich's Unocal	\$27,756.00	\$27,756.00
FOR POSSIBLE ACTION	34.	1999000066	HP Management, LLC: Former Haycock Petroleum	\$8,273.16	\$7,445.85
FOR POSSIBLE ACTION	35.	1999000086	Terrible Herbst Oil Company: Terrible Herbst #126	\$25,580.50	\$13,590.50

ONGOING CASES/OTHER PRODUCTS: CONTINUED

<u>ONGOING CASES/OTHER PRODUCTS: CONTINUED</u>				<u>REQUESTED</u>	<u>RECOMMENDED</u>
FOR POSSIBLE ACTION	36.	1999000090	HP Management, LLC: Former Haycock Petroleum	\$11,075.68	\$9,968.11
FOR POSSIBLE ACTION	37.	1999000104	Terrible Herbst Oil Company: Terrible Herbst #118	\$35,766.52	\$31,724.12
FOR POSSIBLE ACTION	38.	1999000114	City of Fallon: Fallon Maintenance Yard	\$4,628.26	\$4,165.43
FOR POSSIBLE ACTION	39.	1999000135	Terrible Herbst Oil Company: Terrible Herbst #106	\$9,925.59	\$8,933.03
FOR POSSIBLE ACTION	40.	1999000137	Terrible Herbst Oil Company: Terrible Herbst #152	\$13,699.76	\$12,329.78
FOR POSSIBLE ACTION	41.	1999000162	Terrible Herbst Oil Company: Terrible Herbst #159	\$490.75	\$441.67
FOR POSSIBLE ACTION	42.	1999000167	City of Las Vegas: Fire Station #1	\$8,231.75	\$8,231.75
FOR POSSIBLE ACTION	43.	1999000186	Gloria Pilger: Former D&G Oil Facility	\$27,133.29	\$24,419.96
FOR POSSIBLE ACTION	44.	1999000199	Mary Ann Ferguson: Lakeshore Orbit Station	\$45,159.27	\$45,159.27
FOR POSSIBLE ACTION	45.	1999000243	7-Eleven, Inc.: 7-Eleven #27607	\$51,049.47	\$27,566.71
FOR POSSIBLE ACTION	46.	1999000244	7-Eleven, Inc.: 7-Eleven #22070	\$11,970.71	\$10,773.64
FOR POSSIBLE ACTION	47.	1999000257	University of Nevada: Newlands Agriculture	\$2,312.07	\$2,312.07
FOR POSSIBLE ACTION	48.*	1999000273	V.K. Leavitt: The Waterhole	\$64,541.24	\$37,127.78
FOR POSSIBLE ACTION	49.	1999000275	Phillips 66 Company: Circle K #1248	\$4,454.46	\$3,203.95
FOR POSSIBLE ACTION	50.	2004000013	Nevada Nanak Petroleum, Inc.: NV Nanak Petroleum	\$12,946.44	\$6,991.08
FOR POSSIBLE ACTION	51.	2004000025	New Castle Corporation: ARCO #1580	\$27,592.80	\$23,375.52
FOR POSSIBLE ACTION	52.	2004000029	V-R Property Management: Former Gas-N-Save	\$6,062.39	\$2,870.58
FOR POSSIBLE ACTION	53.	2005000002	Carson Valley Oil Co., Inc.: Carson Valley Oil	\$12,750.99	\$11,475.89
FOR POSSIBLE ACTION	54.	2005000004	7-Eleven, Inc.: 7-Eleven #21285	\$13,634.34	\$12,270.91
FOR POSSIBLE ACTION	55.	2005000025	Bordertown, Inc.: Winner's Corner	\$33,201.96	\$29,881.76
FOR POSSIBLE ACTION	56.	2005000029	Phillips 66 Company: Circle K #1302	\$330,507.01	\$226,340.17
FOR POSSIBLE ACTION	57.	2005000036	Phillips 66 Company: Circle K #1791	\$27,169.91	\$19,562.34
FOR POSSIBLE ACTION	58.	2005000044	Ewing Brothers, Inc.: Ewing Brothers Facility	\$19,141.83	\$15,504.88
FOR POSSIBLE ACTION	59.	2007000002	Consolidated Nevada Corp.: Berry-Hinckley #201	\$3,296.85	\$2,967.17
FOR POSSIBLE ACTION	60.	2007000014	Ace Cab Company, Inc.: Ace Cab Company	\$31,298.64	\$28,166.53
FOR POSSIBLE ACTION	61.	2007000016	TOC Holdings Company: Former Time Oil #6-100	\$24,688.50	\$22,219.65
FOR POSSIBLE ACTION	62.	2008000009	Pilot Travel Centers, LLC: Flying J Travel Plaza	\$24,799.45	\$17,855.60
FOR POSSIBLE ACTION	63.	2008000017	Big Daddy's Oil, LLC: Flamingo AM/PM #82153	\$34,264.89	\$18,503.04
FOR POSSIBLE ACTION	64.	2008000018	B-H Ind. dba Terrible's: Terrible Herbst #830	\$89,365.12	\$56,335.34
FOR POSSIBLE ACTION	65.	2008000019	Stop N Shop to Land, LLC: Stop N Shop #2	\$12,144.85	\$10,617.97
FOR POSSIBLE ACTION	66.	2009000009	Tom Schwarz: Zak's Mini Mart	\$19,032.56	\$13,703.44
FOR POSSIBLE ACTION	67.	2009000017	D&J Holdings, LLC: Convenience Corner Shell	\$26,879.53	\$24,191.58
FOR POSSIBLE ACTION	68.	2009000020	Western Energetix: Flyers Energy Bulk Plant	\$8,105.14	\$7,242.43
FOR POSSIBLE ACTION	69.	2009000024	Parampreet Investment, LLC: Chuck's Circle C	\$22,917.90	\$20,626.11
FOR POSSIBLE ACTION	70.	2009000028	Vegas Rainbows, Inc.: Mick & Mac's Food Mart	\$33,902.98	\$29,721.40

ONGOING CASES/OTHER PRODUCTS: CONTINUED

				<u>REQUESTED</u>	<u>RECOMMENDED</u>
FOR POSSIBLE ACTION	71.	2011000006	7-Eleven, Inc.: 7-Eleven #29384	\$9,114.06	\$8,202.65
FOR POSSIBLE ACTION	72.†	2011000007	Echo Bay Marina, LLC: Echo Bay Marina	\$0.00	\$16,382.86
FOR POSSIBLE ACTION	73.	2010000007	Pecos Express, Inc.: Pecos Express	\$11,452.05	\$10,306.84
FOR POSSIBLE ACTION	74.	2010000013	Argyris Enterprises, LLC: City Stop #12	\$46,896.27	\$42,520.65
FOR POSSIBLE ACTION	75.	2011000001	Short Line Express Market: Short Line Express	\$118,966.27	\$106,954.44
FOR POSSIBLE ACTION	76.	2011000003	7-Eleven, Inc.: 7-Eleven #29662	\$5,353.20	\$4,755.19
FOR POSSIBLE ACTION	77.	2011000006	7-Eleven, Inc.: 7-Eleven #29384	\$17,912.30	\$16,121.07

ONGOING CASES/OTHER PRODUCTS SUB TOTAL: \$2,241,193.29 \$1,890,257.59

REQUESTED RECOMMENDED

CLAIMS TOTAL: \$2,524,006.96 \$2,145,888.72

Vice Chairman Ross informed the Board that under Ongoing Cases C, item number 60, Ace Cab Company, is still being represented by a member of the law firm by which he is employed. However, he stated this associate has no bearing on his employment or pay so he will vote.

Chairman Haycock will not be voting under Ongoing Cases C, item numbers 34 and 36, because he is managing partner for HP Management LLC.

Ms. Tappan moved for approval of the consent items, Heating Oil, 1 through 9, New Cases/Other Products, 1 through 4, Ongoing Cases/Other Products, 1 through 77. Ms. Cripps seconded the motion.

Motion carried unanimously.

X. EXECUTIVE SUMMARY

Ms. King presented the Executive summary and informed the Board that the Petroleum Fund (Fund) was established in 1989. Since then 1,404 cases have been evaluated for reimbursement. 121 cases were denied coverage and a total of 1,040 cases have been closed. 7 cases are in pending status awaiting staff review or additional information. 44 cases have expired, 21 new cases have been received by NDEP for evaluation of Fund coverage. There are currently 192 active remediation sites expected to continue with requests for reimbursement.

Not including today's Board authorization, approximately \$165.5 million have been reimbursed. Adding today's reimbursement, approximately \$167.6 million have been reimbursed from the Fund to date.

The invoicing for storage tank Fund enrollment for fiscal year 2012, which runs from October 1, 2011 through September 30, 2012, commenced on August 22, 2011. 1,429 facilities have been invoiced at \$100 per storage tank system. As of May 16, 2012, 1,343 facilities, or approximately 94% have submitted the required fees.

XI. PUBLIC FORM

There were no requests to speak.

XII. CONFIRMATION OF NEXT BOARD MEETING DATE

It was confirmed the next meeting date would be Thursday, September 13, 2012 at 10:00.

XIII. ADJOURNMENT

There being no further business, the meeting adjourned at 11:57 pm.